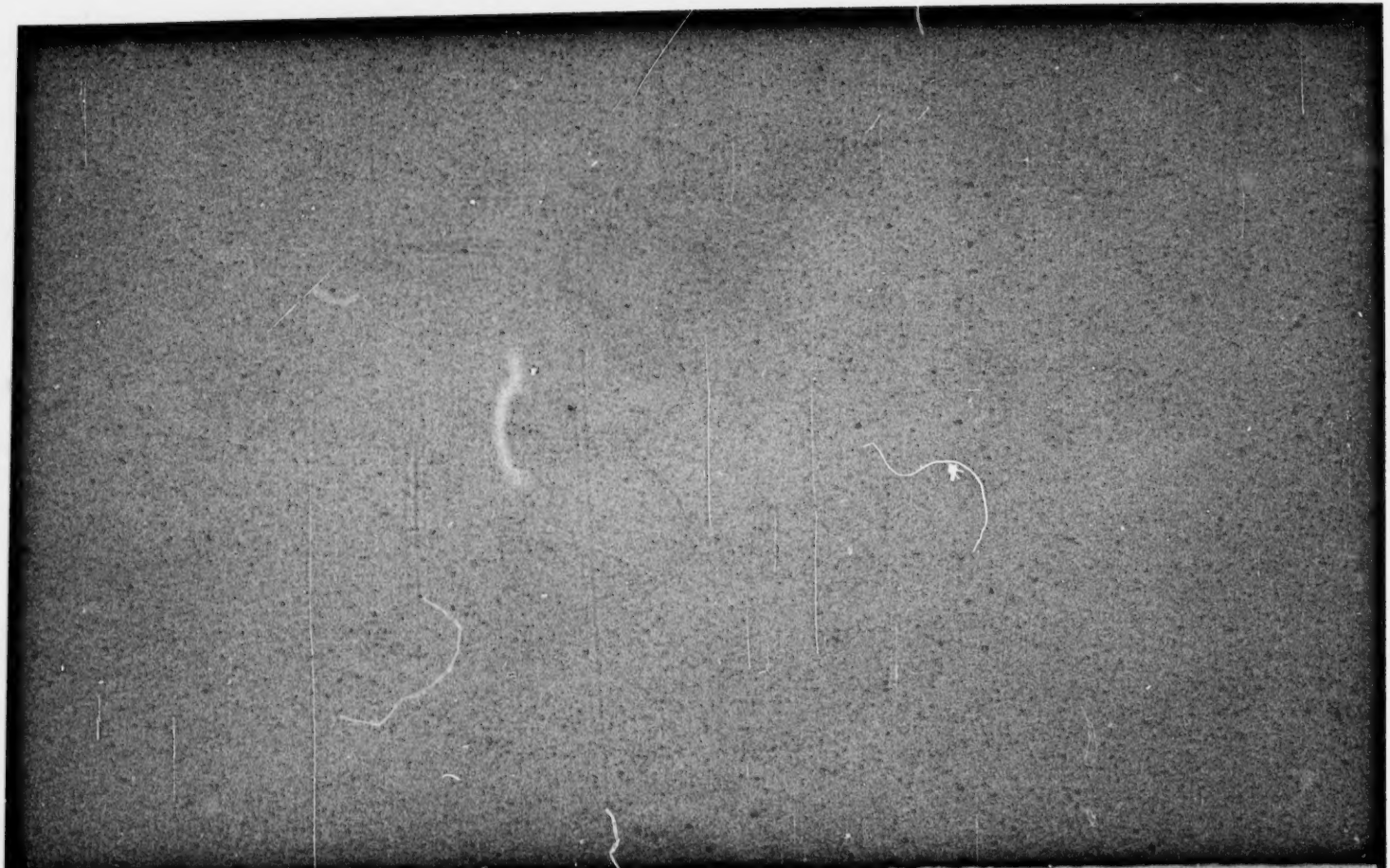

SUPREME COURT, U. S.

FILED

DEC 17 1974

MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-419

AUTOMOTIVE CHAUFFEURS, PARTS AND GARAGE EMPLOYEES LOCAL UNION 926, et al.,
Petitioners,

v.

NAPA PITTSBURGH, INC.,
Respondent.

PETITION FOR REHEARING

DAVID PREVIANT
GERRY M. MILLER
211 West Wisconsin Avenue
Milwaukee, Wisconsin 53203

HERMAN L. FOREMAN
JAMES B. BROWN
300 Grant Building
Pittsburgh, Pennsylvania 15222

ROBERT M. BAPTISTE
25 Louisiana Avenue N. W.
Washington, D. C. 20001
Attorneys for Petitioners

St. Louis Law Printing Co., Inc., 812 Olive Street 63101 314-231-4477

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-419

AUTOMOTIVE CHAUFFEURS, PARTS AND GARAGE EMPLOYEES LOCAL UNION 926, et al.,
Petitioners,

v.

NAPA PITTSBURGH, INC.,
Respondent.

PETITION FOR REHEARING

Petitioners respectfully petition for rehearing of the order denying writ of certiorari entered on December 9, 1974. As grounds therefor, petitioners urge the intervening circumstances presented in their reply and supplemental brief filed belatedly with the Court on December 9, 1974 together with the following.[1]

[1] We respectfully call particular attention to the dissenting opinion of Judge Fairchild in *Inland Steel Company v. Local Union No. 1545, United Mine Workers, etc.*, issued after this petition was filed and reproduced in the Appendix to the reply and supplemental brief at pp. A-11-A-13.

On three separate occasions in the last three months this Honorable Court has refused to grant a petition for writ of certiorari in cases, including the instant one, in which the Courts of Appeal have affirmed the entry of injunctions against activities which are not subject to restraint under the Norris LaGuardia Act.[2] In each such case, including the instant one, the requirements of the Norris LaGuardia Act were not satisfied as a condition precedent to the entry of the injunction. In each such case, including the instant one, the underlying dispute between the parties which gave rise to the exercise of the protected activities did not arise under a collective bargaining agreement between the parties. In each such case, including the instant one, the lower court issued its injunction against peaceful activities which arose *after* the union struck over the underlying, non-arbitrable dispute. In each such case, including the instant one, the court below read this Honorable Court's admonition in *Boys Markets*[3] that it was creating only a "narrow exception" to the Norris LaGuardia Act, to read "a complete abrogation of the Norris LaGuardia Act", if there was *any* arbitration clause in *any* collective bargaining agreement between the parties even though such arbitration clause did not in any way relate to the basic dispute which gave rise to the strike. In each such case including this one, the strike growing out of the basic dispute was not in violation of a contract but was in fact a strike to arrive at a contract.

And, finally, in each such case, the holding of the court below was in direct conflict with the holding of the Court of Appeals for the Fifth Circuit in *Amstar*.[4]

---

[2] *Pilot Freight Carriers, Inc. v. Local 391, Int. Bro. of Teamsters,* 497 F.2d 311 (4th Cir., 1974), *cert. denied* No. 74-48, Oct. 15, 1974; *Local 1426, Int. Longshoremen's Assn. v. Wilmington Shipping Co.*, — F.2d —, 86 LRRM 2846 (4th Cir., 1974), *cert. denied* No. 74-288, Nov. 18, 1974.

[3] *The Boys Markets v. Retail Clerks Union, Local 770,* 398 US 235 (1970).

[4] *Amstar Corporation v. Amalgamated Meatcutters, etc.,* 468 F.2d 1372 (5th Cir., 1972).

The issues presented in this case, regarding the scope of the exception to the Norris LaGuardia Act which was judicially created in *Boys Markets*, is of ever increasing importance to both management and labor in this country since the right to recognize a picket line has been drawn directly into question by these cases, in each of which such right has been suspended by court injunction pending an arbitration which has nothing to do with the conflict which gave rise to the establishment of a picket line. In each case, including the instant one, the lawfulness of the strike is acknowledged. Only picket line activities in support of such strike are in dispute. It is respectfully submitted that such picket line activities, whether arbitrable or not, do not bear the remotest resemblance to the alleged breach of contract arising out of the arbitrable dispute which was before the Court in *Boys Markets*.

CONCLUSION

For the foregoing reasons this Petition for Rehearing should be granted.

Respectfully submitted

DAVID PREVIANT
CERRY M. MILLER
211 West Wisconsin Avenue
Milwaukee, Wisconsin 53203

HERMAN L. FOREMAN
JAMES B. BROWN
300 Grant Building
Pittsburgh, Pennsylvania 15222

ROBERT M. BAPTISTE
25 Louisiana Avenue NW
Washington, D.C. 20001
Attorneys for Petitioners

Certificate of Counsel

This is to certify that the foregoing Petition for Rehearing presented in good faith and not for delay, and that the Petition is restricted to the grounds specified in paragraph two of Rule 58 of the Rules of this Court.

.....

David Previant